No. 674

FILED
JAN 26 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE UNITED STATES SUPREME COURT

ARTHUR S. HUMES, Relator,
Versus
ROBERT HUDSPETH, CECIL SHUTTLEWORTH, ARTHUR HOFFMAN, Respondents.

Certiorari to Kansas Supreme Court and District Court of Leavenworth County, Kansas

RECORD IN KANSAS SUPREME COURT, RECORD IN DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS, PETITION FOR CERTIORARI, BRIEF OF RELATOR, ARGUMENT OF RELATOR

ARTHUR S. HUMES, Relator.

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ARTHUR S. HUMES, Relator.

IN THE UNITED STATES SUPREME COURT.

ARTHUR S. HUMES, Relator,

Vs.

KANSAS SUPREME COURT, John S. Dawson, C. J., District Court of Leavenworth County, Kansas, J. H. Wendorff, Judge, Robert Hudspeth, Warden U. S. Penitentiary, Cecil Shuttleworth, A. Warden U. S. Penitentiary, Arthur Hoffman, Lieut. U. S. Penitentiary, Leavenworth Kansas, Respondents.

JURISDICTION.

Comes now the relator, states that the United States Supreme Court should review the proceedings for the following reasons, to-wit:

1. That the United States was not a party to the suit in either the Kansas Supreme Court, or the Leavensworth County District Court, but that Summerfield Alexander, United States District Attorney for Kansas, appeared for the defendants in his official capacity, and claimed the action was against the United States, and that the Court therefore did not have jurisdiction to proceed. U. S. District Attorney George West, Summerfield Alexander's successor, made the same claim in the Kansas Supreme Court.

2. Objections were raised that the civil process of the Leavenworth County District Court was not good on the Leavenworth Reservation which is surrounded except on the Missouri River side, by Leavenworth County, that the Leavenworth Reservation was the exclusive property of the United States. If their contention was correct, the Kansas Legislature and both State and Federal Courts have for many years been usurping jurisdiction that they do not possess, as Congress has never provided a judge for this reserva-

tion as they have for the District of Columbia. Congress failing to so provide would give your Court original jurisdiction as the United States Supreme Court is the only Court that follows the flag and the flag seems to be the only connection by their contention between the Fort Leavenworth Reservation and the United States.

3. Such contention is contrary to the opinion of the United States Supreme Court in Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 542, 29 L. ed 270.

4. The right of State Courts to pass on Federal questions have been upheld by the United States Supreme Court in

Money v. Halohan, 79 L. E. 103;

Engel v. Davenport, 79 L. E. 813, 80 L. E. 393.

The only notice that the Appellant had of the Kansas Supreme Court intention was the notice that the appeal had been dismissed on November 18th, would seem to be contrary to the United States Constitution as set out in Section 1, Amendment XIV..

6. A United States District Attorney appearing in his official capacity in a suit in which the United States was not a party and coercing the Kansas Supreme Court contrary to their rules to dismiss a case on which the Appellant had no notice that it was being considered on that date would be a violation of Amendment X U. S. Constitution.

ARTHUR S. HUMES,
Relator.

QUESTIONS TO BE DETERMINED.

1.

When a defendant appears specially by attorney and questions the jurisdiction of the Court, and the service of process, on the grounds of Res Judicata, has he not waived his special appearance for both the question of jurisdiction and Service, and appeared?

2.

Since the U. S. Reservation at Leavenworth, Kansas, is surrounded by Leavenworth County except on the Missouri River side, is not the Civil Process of the District Court of Leavenworth County, Kansas, good on the reservation, when the process is served by the Sheriff of Leavenworth County on civil officers of the United States.

3.

Can a United States District Attorney appear in his official capacity for defendants in a suit where the judgment in the suit cannot obligate the United States treasury in any way.

4.

Can one employed in the classified civil service of the United States be discharged without any cause even being given.

ARTHUR S. HUMES,
Relator.

IN THE UNITED STATES SUPREME COURT.

ARTHUR S. HUMES, Relator,

Vs.

KANSAS SUPREME COURT, John S. Dawson, C. J., District Court of Leavenworth County, Kansas, J. H. Wendorff, Judge, Robert Hudspeth, Warden U. S. Penitentiary, Cecil Shuttleworth, A. Warden U. S. Penitentiary, Arthur Hoffman, Lieutenant U. S. Penitentiary, Leavenworth, Kansas, Respondents.

CERTIORARI.

Comes now the relator and states that about July, 1937, he took the Civil Service examination for Junior Custodial Officer at Warrensburg, Mo., which examination he passed and was put on the eligible list for appointment.

On or about November 23, 1938, while relator was Superintendent of Schools at Clarksburg, Missouri, he received a a prospectus from Robert Hudspeth, one of the Respondents in this case, stating that he was being considered for appointment as Junior Custodial Officer at the United States penitentiary at Leavenworth, Kansas, at $1860.00 per year from date of starting until his 62nd birthday, which in Relator's case would be March 5, 1963, less four months the first year, with the question of whether Relator would accept. Relator immediately wrote Mr. Hudspeth asking if the appointment could be deferred to May in order to finish the term of school.

Respondent Hudspeth replied that unless he appeared at once that his name would be stricken from the list.

On or about December 27, 1938, Relator entered on his duties, and was discharged by Respondent

Shuttleworth, acting warden, on Jan. 31, 1939, with the only reason ever having been given at any time was that of Shuttleworth previously that the prison service could not use Democrats, which reason did not seem sufficient but to date has been.

Communications were carried on with the Justice Department and the Civil Service Commission until no reply was had.

About July, 1939, plaintiff requested of U. S. District Judge Richard Hopkins of Kansas to file a petition against these respondents, as a poor man, but got the reply that could not be done but that only Kansas Attorneys could file suits in his Court.

Relator's finances being bad, he waited until about June, 1940, and filed a petition in the District Court of Leavenworth County, Kansas, against these Respondents: Summerfield Alexander, United States District Attorney, appearing in his official capacity under special appearance and insisted that the court had not jurisdiction because the suit was against officers of the United States, and that service of the Leavenworth County District Court on the U. S. Reservation was not good, and the Judge allowed the service to be quashed and refused jurisdiction. Relator waiting too long for appeal, and discovering Kansas does not have Certiorari filed an amended petition in the exact words of the original petition, and was met with the same special appearance and motion to quash the service, as the sheriff could not catch the Respondents in town and again had to serve them on the reservation. Notice was served to take deposition and respondent Hudspeth, and Lieutenant Hoffman were subpoenaed but neither attorneys nor wit-

nesses appeared, and a motion for judgment was filed against them as the U. S. Prison is only about one and one-half miles from the Leavenworth County Court house but the subpoenaes were served on the U. S. Reservation and the Court declined to give judgment.

On the next time on or about February 9, 1942, when Assistant District Attorney Davis made the special appearance on jurisdiction of the Court and motion to quash, holding everything to be Res Judicata. The Court declined jurisdiction, and held Res Judicata. The Court did not re-open the case on having it pointed out that Res Judicata means to adjudicate and that in order to adjudicate the Court must have jurisdiction. That Res Judicate cannot be had on a special appearance, but that the special appearance was waived, and the Court therefore had jurisdiction. The District Court of Leavenworth County, Kansas, could not see things that way and appeal was made to the Kansas Supreme Court. The clerk of the Kansas Supreme Court objected to the filing of the appeal in June, 1942. He returned the check to the Relator and the journal entry to the clerk of the Leavenworth County District Court. Service of notice to appeal was filed on Summerfield Alexander, but he was retired as United States District Attorney and retired as attorney in the case. George West hesitated to take the case and promised to let the relator know if he took the case but the first word that Relator had was West's motion to dismiss about mid October. In the meantime Relator had taken up the matter with the Chief Justice and the case was filed and later docketed for December 9. 1942. Without notice to Relator the Court dismissed

the case on November 16, 1942, and Relator now prays your Court to review the case on certiorari, and determine if the District Court of Leavenworth County, Kansas, has jurisdiction to proceed.

ARTHUR S. HUMES,
Relator.

PETITION IN CONSPIRACY

District Court of Leavenworth County, Kansas

October Term

Arthur S. Humes, Plaintiff of 806 Dollison Street, Springfield, Missouri

vs.

Robert Hudspeth, Cecil Shuttleworth, Arthur Hoffman, W. T. Hammack, a person whose name is unknown to plaintiff, but whose U. S. Leavenworth penitentiary number is believed to be 48053, Defendants.

FIRST AMENDED PETITION

1. Now comes the plaintiff and alleges that on or about June, 1937, the plaintiff took an examination, held for the United States Department of Justice for Junior Custodial Officer, given by the United States Civil Service Commission.
2. On or about November 25, 1938, plaintiff received a letter and a prospectus from the defendant Robert Hudspeth, offering a position at the United States penitentiary, Leavenworth, Kansas, to begin as soon as preliminary matters could be arranged, and continuing until plaintiff was sixty-two years of age (March 5, 1963), at $1860.00 per year less not to exceed four month's time during the first year.
3. On or about December 10, 1938, the plaintiff interviewed the defendant Hudspeth at his office in which interview the defendant Hudspeth made the statement to the plaintiff, "You won't work for me long," but nevertheless, directed the plaintiff to have a physical examination taken, which plaintiff had done by the United States Medical

Service, located within the walls of the United States penitentiary, Leavenworth, Kansas. Except some dental work was needed, the plaintiff passed the examination, and returning to the defendant, Robert Hudspeth, was told by the defendant that plaintiff would probably receive a call within ten days.

4. Defendant Hudspeth notified plaintiff to appear, and on December 27, 1938, the plaintiff appeared, passed a final physical examination was sworn in and started on his duties, defendant Cecil Shuttleworth then being in charge.

5. About the time plaintiff was called the defendants entered into a conspiracy to bring about the discharge of plaintiff, and perhaps others in the following manner:

   The defendant Hoffman was to be made a lieutenant, but being unable to speak English, and knowing little about prison, and being required to pass a promotional examination before he was appointed, defendant 48053 agreed and took the examination, and passed by a high grade for and on behalf of the defendant Hoffman. and with the knowledge and direction of the other defendants.

6. After the day's work on December 27, 1938, the plaintiff wrote out and sent his resignation as Superintendent of School at Clarksburg, Missouri.

7. On December 29th, defendants delivered to plaintiff a letter with a date of December 12, 1938, stating that he was appointed to the Prison Camp Service for not to exceed 120 days, but that was explained to plaintiff to be only a subterfuge to

make the payroll from available funds.

8. The defendant Hoffman called the roll and gave all orders in very broken English, only at times understandable, and his method of using guards at mess time, and on marching to and from the mess was in conflict with the other officers who were in charge of the mess, making both guards and inmates uncertain of what his desires were.

9. Plaintiff worked diligently on the study course, on the pistol practice, as well as on his regular duties, never leaving a post until properly relieved, and was never tardy, but was dismissed without cause through the conspiracy of the first three named defendants who were Superior Servants of the United States on January 31, 1939, by letter of date January 30, 1939, signed by defendant, Shuttleworth, Acting Warden, in which they were recommending to Washington that the dismissal be made final.

10. Over two years have now elapsed, which should be sufficient time for even the Department of Justice to act on a matter. Plaintiff has written many communications in regard to it, until the letters get no reply.

Wherefore the plaintiff prays judgment for damages to the extent of $44,192.57, being the salary to which he would receive from February 1, 1939, to March 5, 1963, together with fees and costs.

ARTHUR S. HUMES,
General Delivry,
Leavenworth, Kansas.

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

No. 27279

Arthur S. Humes, of 806 Dollison Street, Springfield, Missouri, Plaintiff,

vs.

Robert Hudspeth, Cecil Shuttleworth, Arthur Hoffman, a person whose name is unknown to plaintiff, but whose U. S. Leavenworth penitentiary number is believed to be 48053, Defendants.

Special Appearance of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman, to Quash Service of Summons

Come now the defendants Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman, appearing specially for the purpose of this motion and this motion only, and moves the Court to quash the purported service of summons purported to be had and served upon these defendants and each of them on or about December 3, 1941, on the ground and for the following reasons, to-wit:

1. Because this court cannot acquire jurisdiction of the persons of these defendants.

2. Because the United States of America has not consented to be sued in this action.

3. Because the United States of America has not consented that the Warden of the United States Penitentiary, the Associate Warden of the United States Penitentiary, and the Lieutenant in the United State Penitentiary, or any or either of them, may be sued in the State Court.

4. Because the document filed herein, headed "First Amended Petition" does not state a justiciable

cause of action against these defendants or any or either of them over which this court has any jurisdiction or can obtain any jurisdiction.

5. Because the summonses and each of them as so served or purported to be served upon the defendants, respectively, were issued improvidently and without leave of court, and without there being any action then pending in the above entitled court in which any summons could be issued.

6. Because none of such summonses could be served upon the defendants, or any or either of them, upon a Military Reservation of the United States or property within the exclusive jurisdiction of the United States.

7. Because similar summonses of similar tenor and import were attempted to be served upon these defendants respectively on or about June 2, 1941, and which services of summonses was heretofore set aside herein this case, and the decision of this court in setting aside such previous service of summonses on these defendants and each of them is **res adjudicata,** conclusive and binding upon the plaintiff herein, as to the insufficiency of the service of summonses now under consideration.

HOMER DAVIS,

Assistant U. S. Attorney, District of Kansas, appearing specially for the defendants Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman, for the purpose of this motion and this motion only.

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

No. 29279

Arthur S. Humes, Plaintiff,

vs.

Robert Hudspeth, Warden, Cecil Shuttleworth, Senior Associate Warden, Arthur Hoffman, Lieutenant, a person whose name is unknown to plaintiff but whose U. S. Penitentiary number is believed to be 48053, (**Rosalio Chapa**), Defendants.

Journal Entry of Order Sustaining "Special Appearance of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to Quash Service of Summons"

Now on this 9th day of February, A. D. 1942, this cause comes regularly on for hearing before the Honorable J. H. Wendorff, Judge of the District Court of Leavenworth County Kansas, on the special appearance of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to quash service of summons, which said special appearance was filed in this court on December 19, 1941.

Plaintiff, Arthur S. Humes, appeared personally and acted as his own attorney.

Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman appeared specially and only for the special appearance on this motion to quash service of summons, by Homer Davis, Assistant United States Attorney for the District of Kansas.

The Court, being well and fully advised in the premises, having examined the papers and pleadings filed herein, and having heard and considered the arguments of the parties, finds that said special appearance motion of Robert Hudspeth, Cecil Shuttle-

worth, and Arthur Hoffman to quash service of summons should be granted for the reasons enumerated and set forth in said special appearance.

IT IS THEREFORE ORDERED that the special appearance motion of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to quash service of summons, filed December 19, 1941, herein, be and the same is hereby granted and sustained on the grounds and for the reasons set forth in said special appearance.

IT IS FURTHER ORDERED that the service of summons heretofore had on Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman be and the same is hereby set aside and quashed.

J. H. WENDORFF,
Judge.

Approved:
HOMER DAVIS,
Assistant U. S. Attorney,
District of Kansas,
Attorney for Defendants,
Appearing Specially.
ARTHUR S. HUMES,
Plaintiff.

IN THE DISTRICT COURT OF LEAVENWROTH COUNTY, KANSAS

No. 29279

Arthur S. Humes, Plaintiff,

vs.

Robert Hudspeth, et al., Defendants.

NOTICE

To the Leavenworth County District Court and to the Honorable Summerfield S. Alexander and the Honorable Homer Davis, Attorneys for the Defendants, Greetings:

Comes now the plaintiff in the above entitled case and asks you to take notice of the plaintiff's intention to appeal to the Kansas Supreme Court from the ruling of the District Court of Leavenworth County of about February 9, 1942, generally, and specially as follows: Service of Civil Process of the Leavenworth County District Court on the Fort Leavenworth Reservation. Can a court whose jurisdiction is being questioned as to its process pass on the question of **Res Adjudicata,** without taking jurisdiction when **Res Adjudicata,** is pleaded by the defendants' attorney Adjudicata, is pleaded by the defendants' attorney and argued to the court necessitating a ruling by that court?

ARTHUR S. HUMES,
Plaintiff.
321 N. 6th St., Muskogee, Okla.

Received this writ the 2 day of June, 1942, and I delivered personally a true and certified copy of the same to Summerfield S. Alexander, United States Dis-

trict Attorney on this 2 day of June, 1942.

Wm. Frey, Sheriff,
By Gerald Kreipe, Deputy.

SHERIFF'S FEES
Service 1.00
Mileage

Total $1.00
Paid by Plaintiff.

The State of Kansas, First Judicial District, Leavenworth County, ss.

I, Minnie Courtney, Clerk of the District Court of the First Judicial District of the State of Kansas, sitting within and for the County aforesaid, do hereby certify that the above and foregoing to be a true, full and complete copy of Special Appearance of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman, to Quash Service of Summons; First Amended Petition; Notice; Journal Entry of Order Sustaining "Special Appearance of Robert Hudspeth, Cecil Shuttleworth and Arthur Hoffman to Quash Service of Summons on the there entitled cause as the same remains of record in my office.

WITNESS MY HAND, and the seal of said Court, affixed at my office in the City of Leavenworth, this the 22nd day of October A .D. 1942.

Minnie Courtney,
Clerk of the District Court.
By.....Deputy.

IN THE SUPREME COURT OF THE STATE OF KANSAS.

ARTHUS S. HUMES, Appellant,

vs. No. 35735

ROBERT HUDSPETH, Warden, CECIL SHUTTLEWORTH, Senior Associate Warden, ARTHUR HOFFMAN, Lieutenant, etc., Appellees.

BE IT REMEMBERED, that on the 30th day of July, 1942, there was filed in the office of the clerk of the Supreme Court of the State of Kansas a certified copy of the Journal Entry of Judgment of the court below, a copy of which Journal Entry of Judgment is in the words and figures, to-wit:

Arthur S. Humes, Plaintiff,

v. No. 29,279

Robert Hudspeth, Warden, Cecil Shuttleworth, Senior Associate Warden, Arthur Hoffman, Lieutenant, A person whose name is unknown to plaintiff but whose U. S. Penitentiary number is believed to be 48052, (Rosalio Chapa), Defendants.

JOURNAL ENTRY OF ORDER SUSTAINING "SPECIAL APPEARANCE OF ROBERT HUDSPETH, CECIL SHUTTLEWORTH, AND ARTHUR HOFFMAN TO QUASH SERVICE OF SUMMONS"

Now on this 8th day of February, A. D. 1942, this cause comes regularly on for hearing before the Honorable J. H. Wendorff, Judge of the District Court of Leavenworth County, Kansas, on the special appearance of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to quash service of sumomns, which said special appearance was filed in this court on December 19, 1941.

Plaintiff, Arthur S. Humes, appeared personally and acted as his own attorney.

Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman appeared specially and only for the special appearance on this motion to quash service of summons, by Homer Davis, Assistant United States Attorney for the District of Kansas.

The Court, being well and fully advised in the premises, having examined the papers and pleadings filed herein, and having heard and considered the arguments of the parties, finds that said special appearance motion of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to quash service of summons should be granted for the reasons enumerated and set forth in said special appearance.

IT IS THEREFORE ORDERED that the special apearance motion of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to quash service of summons, filed December 19, 1941, herein, be and the same is hereby granted and sustained on the grounds

and for the reasons set forth in said special appearance.

IT IS FURTHER ORDERED that the service of summons heretofore had on Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to be and the same is hereby set aside and quashed.

J. H. WENDORFF
J. H. Wendorff, Judge.

Approved:
HOMER DAVIS
Homer Davis
Assistant U. S. Attorney
District of Kansas,
Attorney for Defendants,
appearing specially.
ARTHUR S. HUMES
Arthur S. Humes, Plaintiff.

IN THE DISTRICT OF LEAVENWORTH COUNTY, KANSAS

Arthur S. Humes, Plaintiff,

v.

Robert Hudspeth et al., Defendants

NOTICE

To the Leavenworth County District Court and to the Honorable Summerfield S. Alexander and the Honorable Homer Davis, Attorneys for the Defendants.

Greetings:

Comes now the plaintiff in the above entitled case and asks you to take notice of the plaintiff's intention to appeal to the Kansas Supreme Court from the ruling of the District Court of Leavenworth County of about February 9, 1942, generally, and specially as follows: Service of Civil Process of the Leavenworth County District Court on the Fort Leavenworth Reservation. Can a court whose jurisdiction is being questioned as to its process pass on the question of Res Adjudicata, without taking jurisdiction when Res Adjudicata is pleaded by the defendants' attorney, and argued to the court necessitating a ruling by that court?

ARTHUR S. HUMES.
Arthur S. Humes, Plaintiff
321 N. 6th St.,
Muskogee, Okla.

State of Kansas)
First Judicial District) ss.
Leavenworth County)

I, Minnie Courtney, Clerk of the District Court of the First Judicial District of the State of Kan-

sas, sitting within and for the County aforesaid, do hereby certify that the above foregoing to be a true, full and complete copy of Journal Entry of Order sustaining "Special Appearance of Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman to Quash Service of Summons" and Notice in the there entitled cause as the same remains of record in my office.

WITNESS MY HAND, and the seal of said Court, affixed at my office in the City of Leavenworth, this the 9th day of June A. D. 1942.

(SEAL). MINNIE COURTNEY,
Clerk of the District Court.
By.....Deputy.

ENDORSEMENTS:
35,735
No. 29,279
DISTRICT COURT
Leavenworth County, Kansas
Arthur S. Humes, Plaintiff
vs.
Robert Hudspeth, Warden, et al.
NOTICE OF APPEAL and
JOURNAL ENTRY OF JUDGMENT
Minnie Courtney
Clerk District Court
FILED July 30, 1942
E. E. Clark
Clerk Supreme Court.

BE IT FURTHER REMEMBERED, that on the 1st day of August, 1942, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a certified copy of the Notice of Appeal from the Judgment of the court below, a copy of which

Notice of Appeal is in the words and figures as follows, to-wit:

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

Arthur S. Humes, Plaintiff,

v. No. 29,279

Robert Hudspeth et al., Defendants.

NOTICE

To the Leavenworth County District Court and to the Honorable Summerfield S. Alexander and the Honorable Homer Davis, Attorneys for the Defendants. Greetings:

Comes now the plaintiff in the above entitled case and asks you to take notice of the plaintiff's intention to appeal to the Kansas Supreme Court from the ruling of the District Court of Leavenworth County of about February 9, 1942, generally, and specially as follows: Service of Civil Process of the Leavenworth County District Court on the Fort Leavenworth Reservation. Can a court whose jurisdiction is being questioned as to its process pass on the question of Res Adjudicate, without taking jurisdiction when Res Adjudicata is pleaded by the defendants' attorney, and argued to the court necessitating a ruling by that court?

ARTHUR S. HUMES, Plaintiff
321 N. 6th St.,
Muskogee, Okla.

Received this writ the 2nd day of June, 1942, and I delivered personally a true and certified copy of the same to Summerfield S. Alexander, United States District Attorney on this 2nd day of June. 1942.

By Gerald Kreipe, Deputy.
Wm. Frey, Sheriff

SHERIFF'S FEES
Service $1.00
Mileage

Total $1.00
Paid by Plaintiff.
State of Kansas)
First Judicial District) ss.
Leavenworth County)

I, Minnie Courtney, Clerk of the District Court of the First Judicial District of the State of Kansas, sitting within and for the County aforesaid, do hereby certify that the above foregoing to be a true, full and complete copy of Notice in the there entitled cause as the same remains on file in my office.

WITNESS MY HAND and the seal of said Court, affixed at my office in the City of Leavenworth, this the 31st day of July A. D. 1942.

(SEAL) MINNIE COURTNEY,
Clerk of the District Court.
By D. Harrison, Deputy

ENDORSEMENTS:
35, 735
No. 29,279
DISTRICT COURT
Leavenworth County, Kansas
Arthur S. Humes, Plaintiff
v.
Robert Hudspeth et al., Defendant
NOTICE
FILED Aug. 1, 1942
E. E. Clark
Clerk Supreme Court.

BE IT FURTHER REMEMBERED, that on the 10th day of October, 1942, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Motion of the Appellee to dismiss the appeal a copy of which Motion to dismiss is in the words and figures as follows, to-wit:

IN THE SUPREME COURT OF THE STATE OF KANSAS

Arthur S. Humes, Relator,

v. No. 35,735

Robert Hudspeth, Cecil Shuttleworth and Arthur Hoffman, Respondents.

MOTION TO DISMISS APPEAL

Comes now the respondents, Robert Hudspeth, Cecil Shuttleworth, and Arthur Hoffman, and move the court to dismiss the pretended appeal to this court for the following reasons:

One,—that no appealable question is presented to the court;

Two,—That the attempted appeal was not filed or perfected within the time prescribed by law or the rules of this court;

Three,—that no sufficient notice of appeal nor proof of service of the same has ever been filed herein.

WHEREFORE, respondents pray the court that the pretended appeal be dismissed.

GEORGE H. WEST
George H. West,
United States Attorney,
Topeka, Kansas.
EUGENE W. DAVIS
Eugene W. Davis,
Assistant U. S. Attorney,
Topeka, Kansas.
Attorneys for Robert H. Hudspeth, Cecil Shuttleworth and Arthur Hoffman, Appearing Specially.

ENDORSEMENTS:
No. 35,735
In the Supreme Court
of the State of Kansas
Arthur S. Humes, Relator,
vs.
Robert Hudspeth, Cecil Shuttleworth &
Arthur Hoffman, Respondents.
MOTION TO DISMISS APPEAL
FILED Octo. 3, 1942
E. E. Clark
Clerk Supreme Court.

BE IT FURTHER REMEMBERED, that on the 10th day of November, 1942, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, an Abstract of the Record, prepared by the appellant herein, a copy of which Abstract of the Record is in the words and figures as follows, to-wit:

(District Court record printed on pages 8 to 16 this book.)

BE IT FURTHER REMEMBERED, that on the 10th day of November, 1942, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Motion of the Appellant for Judgment, a copy of which Motion for Judgment is in the words and figures as follows, to-wit:

IN THE KANSAS SUPREME COURT

Arthur S. Humes, Appellant,

v. No. 35,735

Robert Hudspeth, etc., et al., Appellees.

MOTION FOR JUDGMENT

Comes now the appellant and states that on October 23, 1942, he had summoned the defendant, Robert Hudspeth, to give testimony to be used as a deposition in the above named case, that the said Robert Hudspeth is now making his home part of the time beyond the process of a Kansas Court's, that the aforesaid Robert Hudspeth failed to appear as certified to by Clark A. Thorp, a Notary Public, residing in the County of Leavenworth, and the aforesaid Robert Hudspeth was summoned in the aforesaid County of Leavenworth as certified to by the Sheriff of Leavenworth County.

Mr. Hudspeth's failure to appear seemed to be contrary to the Laws of Kansas as set out as Sec. 60-2821, R. S. Kansas 1935.

Wherefore the appellant prays that as far as appellees' pleadings concern the aforesaid Robert Hudspeth that they be stricken from the files and judgment as prayed in the Petition and Costs to date, be entered against the aforesaid Robert Hudspeth.

ARTHUR S. HUMES,
Arthur S. Humes,
Appellant.

ENDORSEMENTS:
35,735
MOTION FOR JUDGMENT
FILED NOV. 10, 1942
E. E. Clark,
Clerk Supreme Court.

BE IT FURTHER REMEMBERED, that on the 16th day of November, 1942, the same being one of the regular judicial days of the July 1942, term of the

Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka, the following proceedings among others was had and remain of record in the words and figures, as follows, to-wit:

IN THE SUPREME COURT OF THE STATE OF KANSAS

Topeka, Monday, November 16, 1942.

Arthur S. Humes, Appellant,

v. No. 35,735

Robert Hudspeth, et al., Appellees.

Now come the appellees and move the court for an order dismissing this appeal and the court being fully advised in the premises, it is ordered that this appeal be dismissed at the cost of the appellant, taxed at $....., and hereof let execution issue.

STATE OF KANSAS } SS.
SUPREME COURT. }

I, E. E. Clark, Clerk of the Supreme Court of the State of Kansas do hereby certify that the above and foregoing pages 1 to 33 inclusive, constitutes a full, true and correct transcript of the record and proceedings had in the case of Arthur S. Humes, Appellant v. Robert Hudspeth, Warden, Cecil Shuttleworth, Senior Associate Warden, Arthur Hoffman, Lieutenant, etc., Appellees, as the same appears of record and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affxed the seal of said Supreme Court, at my office in the city of Topeka, this, 24th day of November, 1942.

(SEAL.

E. E. CLARK,

Clerk of the Supreme Court of the State of Kansas.

IN THE SUPREME COURT OF THE STATE OF KANSAS.

No.....

ARTHUR S. HUMES, Relator,

vs.

ROBERT HUDSPETH, CECIL SHUTTLEWORTH, ARTHUR HOFFMAN, Respondents.

Appeal from the District Court of Leavenworth County, Kansas, Honorable Judge Wendorff, Presiding.

BRIEF OF RELATOR.

"No person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of the said service, and for reasons given in writing, and the persons whose removal is sought shall have notice of the same and of any charges preferred against him. * * * "

—Title 5, Sec. 652, U. S. Code.

"Res Judicata (Lat. the matter has been adjudged). A legal or equitable issue which has been decided by a court of competent jurisdiction."

—Bouveir Law Dictionary.

"To judge from the accuracy of the proper extent of the federal judicature, it will be necessary to consider in the first place what are its proper objects.

"It seems scarce to admit of controversy that the judiciary authority of the union ought to extend to these several descriptions of cases: 1st. To all of those that arise out of the laws of the United States, passed in pursuance of their just and constitutional

powers of legislation; 2nd, To all those which concern the execution of the provisions expressly contained in the Articles of Union; 3rd, To all those in which the United States are a party; 4th, To all those which involve the peace of the confederacy, whether they relate to the intercourse between the states themselves: 5th, To all those which originate on the high seas and are of admiralty, or maritime jurisdiction; and lastly to those in which the state tribunals cannot be supposed to be impartial and unbiased."

—Hamilton, The Federalist, No. LXXX.

"Obligation to guard and enforce every right secured by the Federal Constitution rests on the state courts equally with the federal courts."

—Mooney v. Holohan, 79 L. ed. 103.

"State courts have concurrent jurisdiction to enforce seaman's rights of action established by the Merchant Marine Act."

—Engel v. Davenport, 70 L. ed. 813.

"Though federal courts have original jurisdiction of suits by the United States at law or in equity, such jurisdiction is not exclusive."

—80 L. ed. 393.

"Generally, state courts have concurrent jurisdiction with federal courts of actions arising under federal statutes."

—Thomas v. Chicago, B. & Q. Railroad Co., 127 Kan. 326, 273 Pac. 451, 64 A. L. R. 322.

"State courts must hold themselves open for prosecution of civil right growing out of the United States laws."

—Miller v. Reading Co., 140 A. 618, 292, 44.

"State court has concurrent jurisdiction with fed-

eral courts to pass on federal question."

—Caruthers v. Hines, 275 U. S. 525, 72 L. ed. 406.

State district courts are of general jurisdiction, competent to try actions under Federal Employers' Liability Act."

—Witort v. C. & N. W. R. R. Co., 178 Minn. 261.

"State courts have jurisdiction over officers of the United States courts such as marshals, referees. and trustees in bankruptcy to require damages for wrongful acts entirely beyond the legitimate scope of their official duties."

—Smith v. Beaman, 68 S. E. 1014, 8 Ga. App. 262.

"A suit by a riparian owner to prevent interference with his rights in a submerged water front by an officer of the United States in possession of a pier built by the United States is not a suit against the United States."

—Scranton v. Wheeler, 179 U. S. 141, 45 L. ed. 126.

"The military reservation of Fort Leavenworth was not, as already said, acquired by purchase with the consent of Kansas. And her cession of jurisdiction is not of exclusive legislative authority over the land, except so far as that may be necessary for a military post."

—Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 542. 29 L ed. 270.

"That the exclusive jurisdiction be, and the same is hereby ceded to the United States over and within all the territory owned by the United States, and included within the limits of the United States military reservation known as the Fort Leavenworth Reservation in said State, as declared from time to time by the President of the United States, saving, however,

to the said State the right to serve civil or criminal process within said reservation, in suits or prosecutions for or on account of rights, acquired, obligations incurred, or crimes committed in said State, but outside of said cession and reservation; and saving further to said State the right to tax railroad, bridge, and other corporations, their franchise and property, on said reservation."

—Laws of Kansas of 1875, p. 95.

ARGUMENT.

The relator took the Civil Service examination, passed and some months later was appointed a junior custodial officer at Leavenworth, Kansas. About five weeks after the relator entered on his duties, without cause the relator was dismissed. Several months later the relator filed suit in the Leavenworth County District Court against these respondents and service was had on them on the United States Reservation adjoining Leavenworth, Kansas.

The respondents specially appeared and asked the court to quash the service, because service was not had in Kansas, but upon the United States Reservation. Along with other reasons to quash, the Honorable Summerfield S. Alexander and the Honorable Homer Davis specially appearing as attorneys for the respondents in their official capacities as United States District Attorneys. Relator objected to their appearing in their official capacities as the United States was not a party to the suit. Whether the court received them in their official capacities or as attorneys of his court is not disclosed, but the court heard their prayer, and refused to take jurisdiction. The relator

having waited too long for appeal, filed an amended petition with little change from the original petition, with request to the sheriff to summon the respondents in Leavenworth if possible, but the last day of the service of process having arrived, and his inability to serve them in Leavenworth, the service was again had on them on the United States Reservation where the respondents reside a few feet from Leavenworth, Kansas.

The Honorable Homer Davis again appeared with the same requests as before, to dismiss, and the additional request of res adjudicata. During the time the relator had subjoenaed the respondents, Robert Hudspeth and Arthur Hoffman to appear to give testimony for deposition, who failing to appear, relator had asked for a default judgment against these respondents.

The court heard all matters except res adjudicata and pondered. Then the learned counsel for the respondents raised the question of res judicata, and insisted that all matters had been determined. Here was the learned counsel for the respondents pretending to be specially appearing, and insisting that the court did not have jurisdiction, suddenly bringing to the court the matter of res judicata, which words in themselves, in Latin and in English, mean to adjudicate. In other words the learned counsel for the respondents was asking in one breath, a judge to act as a court and say that he was not a court by only a judge.

To the relator at no time was it Judge Wendorff, but always the District Court of Leavenworth County, Kansas; to the respondents it may have formerly been

Judge Wendorff until they pleaded and brought to the court's attention res judicata and pressed for an opinion, to them then Judge Wendorff was no more, it was the District Court of Leavenworth County, Kansas; to the District Court of Leavenworth County Kansas, it may have been Judge Wendorff but when at the time his mouth was opened to respond to the learned counsel of the respondents Judge Wendorff had passed from the case, as the response was that of the Leavenworth County District Court. Res judicata cannot be passed on by a judge, it must be passed on by a court. At the time the court spoke, the judge was seated on the bench in the Leavenworth County court house, District courtroom, the place provided by the people of Leavenworth County for District Court to be held, the clerk was present, the sheriff within call, the relator seated at the table opposite where the learned counsel for the respondents stood at the time he threw off his questioning the jurisdiction, and appealed for res judicata, a judicial, and not a ministerial question.

The court erred in holding that he did not have jurisdiction for the learned counsel for the respondents stopped his doubt, and made the court take jurisdiction, for the question was service of process out of the State of Kansas on the Fort Leavenworth Reservation.

It was now not material whether there had been service at all, for the learned counsel for the respondents had appeared, and prayed the court to act in response to relator's petition.

In a special appearance it is the client that appears specially and not the attorney. The learned counsel for the respondents was a member in good

standing at the Bar of the Leavenworth County District Court, his act was such to be within the discretion of an attorney, so he waived the special appearance of his clients and asked for res judicata which is contrary to the theory of special appearance, for the one who asks for res judicata has had to waive his question of jurisdiction of the court. To do otherwise would place the pleader in the same position as the infidel who prays to the God that to him cannot exist.

The judge can act only on things of a ministerial nature, he cannot pass on judicial matters. Kansas provides what the judge can pass on in chambers or wherever he may be found. The learned counsel for the respondents would not have gone to the judge in chambers neither would the judge have passed on res judicata in chambers, but the matter was passed on by the Leavenworth County District Court, as he had jurisdiction of the subject-matter and the court could grant the relief prayed for, the relator was present, and had given his jurisdiction when the petition was filed, the respondents, even if the service was not good, had appeared and required the court to act on res judicata.

The Fort Leavenworth Reservation is either a part of Kansas or it is not a part of Kansas. Suppose for argument's sake it is not a part of Kansas, then the Kansas Legislature would have no more jurisdiction over it than it would over the District of Columbia. The courts of Kansas would have no jurisdiction there. Since it is not a part of the State of Kansas the United States District Court nor the Circuit Court of Appeals would have no jurisdiction as Congress has never put the Fort Leavenworth Reser-

vation in any district. The only court that could possibly have jurisdiction is the United States Supreme Court, for it is the only court that follows the flag, and the flag would seem to be all the connection between Fort Leavenworth Reservation and the United States.

Amendment XIV of the United States Constitution provides that all persons that are citizens of the United States are citizens of some state. Respondent, Shuttleworth, may be a citizen of Minnesota and reside on the Fort Leavenworth Reservation; respondent Hoffman may be a citizen of New York, and reside there; but if respondent Hudspeth is not a citizen of Kansas, could he be a citizen of the United States for it does not appear that he is a citizen of any other state?

On the other hand the United States Supreme Court, in Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 542, 29 L. ed 270, seems to hold that the Fort Leavenworth Reservation is a part of the State of Kansas.

The court may perhaps take judicial notice of how affairs are carried on on the reservation. If a female were taken from Atchison to Leavenworth by highway or by the Missouri Pacific Railroad to Leavenworth for immoral purposes would the party be liable to be charged under the Mann Act; if a car was stolen and carried across the reservation would the Dyer Act apply? A crime is committed in Leavenworth and the criminal crosses Metropolitan Avenue and is found on the sidewalk on the reservation side, to whom would the governor of Kansas apply for extradition if it was necessary? Does not the Legislature of Kansas legislate for the Leavenworth Reservation?

Since the Legislature of Kansas legislates for the Leavenworth Reservation is not the reservation a part of Kansas? If it is a part of Kansas it must be a part of some county, and that county seems to be Leavenworth County.

The Kansas Legislature does not seem to have ever provided for a special court for the Leavenworth Reservation, the Kansas Constitution makes the District Courts courts of general jurisdiction, and until some other court is provided that court must act.

It would be impossible for a court to function whose process could not be enforced, so but one conclusion could be logically drawn, and that is that the process of the Leavenworth County District Court would be good on the Fort Leavenworth Reservation the same as anywhere else in Leavenworth County.

Respectfully submitted,

Arthur S. Humes,

Relator.

ADDITIONAL ARGUMENT

Since rule No. 10 Kansas Supreme Court Rules in regard to motion and notice as pertaining to this subject matter is: "No. 10. In writing—Notice. Orders for settling disagreements concerning abstracts, or for reviewing, continuing, or advancing or dismissing causes, or retaxing costs, will be made only upon written motions stating fully and specifically the grounds therefor, and at least ten days' notice of the time of hearing thereof must be served on the opposing counsel, together with a copy of the motion. Such motions, together with proof of service of notice, must be filed with the clerk three days before time fixed for submission."

As plaintiff had no notice that any matter would be taken up on November 16, 1942, or any other day except December 9, 1942, and receiving the following reply from the United States District Attorney's office in a request to Honorable George West; Post Office Building Topeka, Kansas, asking if, since it was short that the whole record should be printed replied with the following:

Department of Justice
UNITED STATES ATTORNEY
District of Kansas
Topeka, Kansas
November 24, 1942

Mr. Arthur S. Humes
Benton, Missouri
Dear Sir:

Your letter of November 20, 1942, with reference to case No. 35,735 recently pending in the Supreme Court of Kansas, is acknowledged.

In reply wish to advise that we regard this matter as now closed.

Very truly yours,
EUGENE W. DAVIS
Eugene W. Davis
Assistant U. S. Attorney

EWD:jp

With the record being very brief on Nov. 16th in the Kansas Supreme Court what happened there that day can be guessed at as well by the court as by the relator.

ARTHUR S. HUMES,
Relator.